

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

May 1, 2000

D035371 City of San Diego v. Superior Court of San Diego County/PCL Civil Constructors, Inc.

The petition is denied.

D035451 Shea Homes et al. v. Superior Court of San Diego County/Prem et al.

The petition is denied.

D031701 People v. Mena

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., McDonald, J.

D032682 Cavigliano v. Cavigliano et al.

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., McDonald, J.

D032582 Hidden Valley Construction, Inc. v. Housing Authority of City of San Diego et al.

The dismissal of Housing's cross-complaint for liquidated damages is vacated and we order judgment on Housing's cross-complaint to be entered for \$4,000 in favor of Housing (8 days of delay caused by Hidden Valley multiplied by liquidated damages of \$500/day). The judgment in favor of Hidden Valley is reversed to the extent that it awards attorney fees and prejudgment interest to Hidden Valley and denies Housing an award of costs after the date of the section 998 offer. The judgment is modified to eliminate the delay damages award for home office overhead (\$46,687) and profit on overhead (\$5,309); to reduce the unpaid contract balance award by \$14,605.52. We remand for a determination of the field office overhead award consistent with our opinion. Likewise, we remand for a determination of Housing's costs and consideration of whether Housing should be awarded expert witness fees. In all other respects, the judgment is affirmed. Each side to bear their own costs on appeal. Kremer, P.J.; We Concur: Benke, J., Haller, J.

D034692 In re Vanessa S., a Juvenile

The order of September 23, 1999, summarily denying Linda's section 388 petition to the extent it requests return of custody is affirmed. The order of October 21, 1999, denying the petition's alternative request for reunification services is affirmed. Benke, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D031113 Taylor v. McInnis Fitzgerald Rees & Sharkey

The judgment is affirmed. Respondents shall recover costs on appeal. McDonald, J.; We Concur: Kremer, P.J., Benke, J.

D034172 People v. Frontier Pacific Insurance Company

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal.Rules of Court, rule 19(b)). Each party to bear own costs on appeal.

D033693 In re Marriage of Williams

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal.Rules of Court, rule 19(b)). Each party to bear own costs on appeal.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

May 1, 2000 (Continued)

D032289 Carpenter et al. v. Producer Sportfishing, Inc., et al.

It is ordered that the opinion filed April 4, 2000, is modified. There is no change in judgment. The petition for rehearing is denied.

D034097 In re Matthew Z., a Juvenile

The judgment is affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Haller, J.;
We Concur: Kremer, Acting P.J., Nares, J.

D035491 In re Gayosso on Habeas Corpus

The petition is denied.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

May 2, 2000

D034694 Bregman v. Reynolds

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)). Each party to bear own costs on appeal.

D032329 People v. Lockett

The judgment on convictions is reversed as to the convictions on counts 1, 2 and 4 and the sentences imposed on those counts are stricken. The judgment is otherwise affirmed. McIntyre, J.;
We Concur: Nares, Acting P.J., Haller, J.

D031738 People v. Sanchez

The judgment is affirmed. McIntyre, J.; We Concur: Nares, Acting P.J., Haller, J.

D032154 People v. Wallace et al.

D034706 In re Wallace on Habeas Corpus

D034258 In re Mitchell on Habeas Corpus

The petitions for writ of habeas corpus In re Marquice Dupree Wallace (D034706) and In re Demond Kadura Mitchell (D034258) are consolidated with the pending appeal People v. Wallace et al., for disposition.

D032154 People v. Wallace et al.

D034706 In re Wallace on Habeas Corpus

D034258 In re Mitchell on Habeas Corpus

(Consolidated) The judgments as to Mitchell and Mainor are affirmed. The judgment as to Wallace is modified such that (1) the 10-year enhancement under section 12022.53 on count 2 is stricken and a 4-year enhancement under section 12022.5, subdivision (a) (1) is imposed in its stead, and (2) his presentence custody credit is increased from 167 to 169 days. Wallace's judgment is affirmed in all other respects. The petition for writ of habeas corpus filed by Wallace is denied. The petition for writ of habeas corpus filed by Mitchell (D034258) is also denied. McIntyre, J.; We Concur: Nares, Acting P.J., Haller, J.

D035530 People v. Superior Court of San Diego County/Mullen

The petition is denied.

**D035446 San Dieguito Orthopaedic Medical Group, Inc. v. Superior Court of San Diego
County/Medaphis Physician Services Corporation**

At the request of petitioner, the petition for writ of mandate filed April 17, 2000, is dismissed.

D032977 Smith et al., v. Morgan et al.

D033144 Morgan et al., v. Smith et al.

D033226 Morgan et al., v. Smith et al.

(Consolidated) Judgments affirmed. Haller, J.; We Concur: Kremer, P.J., Huffman, J.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

May 3, 2000

D031380 Celebrity Prime Foods v. Szynter

The order granting injunctive relief is reversed. Benke, J.; We Concur: Kremer, P.J., Haller, J.

D031379 Bakall v. San Diego County Water Authority

We affirm the judgment. Respondent is entitled to costs on appeal. McDonald, J.;
We Concur: Benke, Acting P.J., O'Rourke, J.

D033887 In re Fabian Z., a Juvenile

Order affirmed. Work, Acting P.J.; We Concur: Benke, J., Nares, J.

D032998 People v. Cavalieri

The judgment is affirmed. Benke, J.; We Concur: Kremer, P.J., Haller, J.

D030802 Coscia v. Cuneo et al.

The judgment is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion. Coscia is to recover costs on appeal. CERTIFIED FOR PUBLICATION.
McIntyre, J.; We Concur: McDonald, Acting P.J., Quinn, J. (assigned)

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

May 4, 2000

D033839 People v. Cowan

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 38).

D030967 Lim v. White

D031678 Lim v. White

The petition for rehearing is denied.

D032369 In re the Marriage of Espinoza

The order appealed from is affirmed. Costs are awarded to Respondent. Huffman, J.;
We Concur: Kremer, P.J., O'Rourke, J.

D033473 Gilliam v. Richardson Family Trust

The judgment is affirmed. Huffman, J.; We Concur: Work, Acting P.J., Benke, J.

D032463 O'Harren v. USAir, Inc.

The petition for rehearing is denied on the merits. As to the tenor of the petition, the court refers counsel for appellant to Business and Professions Code section 6068, subdivision (b).

D034013 Birndorf v. Superior Court of San Diego County/Alexzander

The petition for rehearing is denied.

D031416 Stern et al. v. Herron et al.

The judgment is affirmed. The defendants shall recover their costs on appeal. Huffman, J.;
We Concur: Kremer, P.J., O'Rourke, J.

D028102 Harper v. L. B. Elms Termite Control, Inc.

D029170 Hardage et al. v. Harper

(Consolidated) We reverse the judgment in favor of the Hardages as to that part of the damages determined by the purchase price and remand for a partial retrial for the jury to determine the purchase price, unless the Hardages consent to a reduction of the damage award as provided herein in which case the trial court is directed to modify the judgment. We affirm the judgment in all other respects. The Hardages and Harper are to bear their own costs on appeal and Elms is awarded its costs on appeal.

D033699 Fuel Control Services, Inc. v. Dugger

The order staying the instant action on forum non conveniens grounds is affirmed. The parties shall bear their own costs on appeal. Nares, J.; We Concur: Kremer, P.J., O'Rourke, J.

D033407 People v. Allen

The judgment is affirmed. Nares, J.; We Concur: Kremer, P.J., O'Rourke, J.

D035308 In re Allen on Habeas Corpus

Because we affirm the judgment on this ground in the appeal, the petition for writ of habeas corpus is moot.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

May 4, 2000 (Continued)

D034697 In re Shaurice H., a Juvenile

The judgments are affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

May 5, 2000

D032949 People v. Twyne

The judgment is affirmed. Work, Acting P.J.; We Concur: Benke, J., McDonald, J.

D032561 Centex Securities et al. v. Felix et al.

The judgment is reversed and the matter is remanded to the trial court for further proceedings in conformance with the views expressed herein. Centex is awarded costs on appeal. Haller, J.

We Concur: Work, Acting P.J., McDonald, J.

D035535 McKinney v. San Diego County Superior Court/McKinney

The petition is denied.

D035542 Pratt et al. v. Superior Court of San Diego County/Syntron Bioresearch, Inc.

The petition is denied.